July 8, 2019

VIA ELECTRONIC FILING
Marlene Dortch, Secretary
Federal Communications Commission
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Washington, D.C. 20554

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Re: Dynetics, Inc. - Ex Parte Letter
"Request For Modification Of Freeze" and "Request For Limited Waiver"
WT Docket No. 19-39

Ms. Dortch:

Consistent with its request for expedited action in the above-referenced proceeding, Dynetics, Inc. ("Dynetics") respectfully requests that the relief requested in its "Request For Modification Of Freeze" or in the alternative the "Request For Limited Waiver" be promptly granted, to address the urgent national security issues addressed in such filings.

With respect to the "Request For Modification Of Freeze":

- Modifying the Freeze to apply only to the 3450-3550 MHz range (pursuant to 47 C.F.R. §1.41) is fully supported by the record, which confirms not only that (i) critical infrastructure operators must comply with long-term sector-specific physical site protection requirements and therefore must rely on the continued ability to obtain non-temporary licenses authorizing the operation of state-of-the-art radiolocation technologies in the 3.1-3.3 GHz range or face increased risk of attack and enforcement penalties;[1] but also – significantly – that (ii) NTIA's "active consideration" for "possible alternative use" is limited to the 3450-3550 MHz segment, and such limitation with respect to NTIA's review has been demonstrated via:

    - NTIA's statements directly to Dynetics, which confirmed that – with respect to the 3 GHz mid-band spectrum - no additional frequencies have been identified by NTIA for alternative use beyond the limited 3450-3550 MHz frequency range previously identified in February 2018, and NTIA is not considering the 3100-

[1] See Dynetics' "Request For Modification Of Freeze" filed May 17, 2019, p. 4-11; Dynetics' "Request For Limited Waiver" filed May 17, 2019, p. 2-10; Comments of Southern Company Services, Inc. ("Southern") filed June 12, 2019, p. 2-7; Reply Comments of Southern filed June 24, 2019, p. 2-3; Reply Comments of Dynetics filed June 24, 2019, p. 2-5; See also Comments of Eco Technologies Inc. filed June 17, 2019; Comments of The Saltex Group filed June 17, 2019; Comments of Van Cleve & Associates, Inc. filed June 17, 2019; Comments of BlackSage filed June 17, 2019; Comments of Peak Industries, Inc. filed June 18, 2019; Comments of Del Deason filed June 18, 2019; Comments of Walter Messa Jr. filed June 19, 2019; Comments of Hawaii Electric filed June 20, 2019.

3450 MHz range for alternative use for inclusion in the report due in March 2020.[2]

- Other current and reliable documentation addressing the scope of NTIA's "active consideration",[3] which includes CTIA's own recent statements in various filings with the Commission, which consistently identify the 3450-3550 MHz segment as the 3 GHz mid-band range actually under review by NTIA.[4]

With respect to the "Request For Limited Waiver":

- If the Request For Modification is granted in full, grant of the Request For Limited Waiver would not be necessary. However, in the alternative, the record also fully supports grant of the limited waiver requested by Dynetics pursuant to each of the separate and independent grounds specified at:

  - 47 C.F.R. §1.3
  - 47 C.F.R. §1.925 (b)(3)(i)
  - 47 C.F.R. §1.925 (b)(3)(ii)

Grant of relief is necessary to protect the physical site safety of the following operators:

(i) The critical infrastructure operators who have already been issued Part 90 radiolocation licenses in the 3.1-3.3 GHz range and who will continue such non-temporary licensing as soon as the requested relief has been granted, and the nearly 100 additional critical infrastructure operators which have already identified and incorporated 3.1-3.3 GHz radiolocation technology – and the non-temporary Commission licensing of such technology - into their long-term physical site protection plans;

(ii) And just as importantly - The critical infrastructure community in general, a large percentage of which is still in the planning phase with respect to the implementation of physical site protection plans. For this larger community, new critical sites are being identified/built and such sites will need to be protected by long-term Commission-licensed radiolocation technologies, and such activity will drive a continual, but manageable, annual growth of the deployment of critical infrastructure protection systems in the 3.1-3.3 GHz range for years, and likely decades, to come.

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[2] See Dynetics' Reply Comments filed June 24, 2019, p. 11-12.
[3] See Southern Reply Comments at 4; Dynetics' Reply Comments at n.32.
[4] See Reply Comments of Southern Company Services, Inc. ("Southern") filed June 24, 2019, p. 4-6; Dynetics Reply Comments at n.33.

To be certain, for all of these affected critical infrastructure operators (those who have already begun to incorporate/license the affected technology and those still in the planning phase), there are no "reasonable alternatives"[5] because the affected technology, and its functionality and frequency range, represent optimal state-of-the-art choices for which there are no "like performing" options, and therefore other theoretically available options are not "reasonable". In this regard:

- Other inferior available systems utilize frequency ranges and designs that do not provide the all-weather capability, accuracy, clutter management, and threat classification that the affected 3.1-3.3 GHz radiolocation systems provide. Thus, continuing to withhold the availability of non-temporary licensing for the affected optimal systems, and requiring utilization of inferior, not similarly-situated systems that do not provide these advanced capabilities, would expose critical infrastructure owners to missed intruder detections, ambiguity of intruder classifications, overall lower situational awareness, and higher false alarm rates.

- Other inferior available systems involve the deployment of more cameras and other types of "man monitored" systems that do not meet the broader objectives of critical infrastructure operators and the level of automation that the affected 3.1-3.3 GHz radiolocation systems provide to achieve these objectives. Thus, continuing to withhold the availability of non-temporary licensing for the affected optimal systems, and requiring utilization of inferior, not similarly-situated systems that: (i) do not effectively monitor continually increasing human work forces and continually larger and more costly infrastructure; (ii) do not provide both detection and deterrence of threats; and (iii) are more likely to result in operator fatigue and distraction, violates key objectives of critical infrastructure operators who must evolve their security capabilities in order to continue to comply with critical infrastructure protection standards, and ultimately threatens national security.[6]

[5] See 47 C.F.R. §1.925 (b)(3)(i)(ii).

[6] It is noted that within the energy sector, the cost of implementing radiolocation-based critical infrastructure protection at one site is recouped by the deterrence of a single intrusion attempt that would have caused damage to the site requiring unplanned service outages to repair, the reallocation of infrastructure maintenance crews to do the repairs, and the purchase and delivery of replacement components which are costly and typically very long lead items. Further, the use of these systems increases public safety by deterring would-be intruders that often suffer fatal injuries attempting to enter and exploit a critical infrastructure site.

- Finally, applicable precedent supports a finding of "no reasonable alternatives" and therefore grant of waiver when – as is the case here - the affected technology, and its functionality, is of such considerably superior quality and of such specific utility to the proposed applicant,[7] that denying use of such technology would be contrary to the public interest.[8]

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[7] See e.g., Reply Comments of Southern at 5 (""[t]he Manager of Infrastructure Protection, Corporate Security, for Georgia Power has reported that in several decades of experience in law enforcement and corporate security he has not seen an intrusion detection technology as effective as this ground-based radar system."); Comments of Eco Technologies at 1 (the GroundAware® radar "is a perfect tool…due to the Radar Fidelity and ability to categorize targets in real time."); See also *In the Matter of Commonwealth of Pennsylvania and GPU Energy, Request for Waiver of Section 90.179 of the Commission's Rules*, 14 FCC Rcd. 14029, ¶12 (WTB: 1999) ("The Commonwealth and GPU also have demonstrated that there are no reasonable alternatives within the existing rules to accommodate the described needs. We note that public safety agencies have special communications requirements, including, among other things, (1) dedicated capacity and/or priority access available at all times (and in sufficient amounts) to handle unexpected emergencies[;] (2) highly reliable (redundant) networks which are engineered and maintained to withstand natural disasters and other emergencies; (3) ubiquitous coverage within a given geographical area; [and] (4) . . . unique terminal equipment (mobile or portable units) designed for quick response in emergency situations. *The Commonwealth and GPU state that no other system in Pennsylvania, commercial or private, for-profit or non-profit, provides the range, reliability, capacity and control of the proposed system*. In addition, the record in this proceeding indicates that public safety agencies in Pennsylvania need technically advanced, wide-area communications services, but lack access to sufficient spectrum, are relatively small in size, or are otherwise not in a position to implement systems that would provide the same benefits as those associated with the proposed system. Under these circumstances, we do not believe that requiring each agency to construct a stand-alone communications system would be practicable.") (footnotes omitted) (emphasis added).

[8] See *Rig Telephones, Inc. d/b/a Datacom; Request for Waiver of Part 101 of the Commission's Rules*, 13 FCC Rcd. 25391, ¶8 (PS&PWD - 1998) ("…microwave users operating in the Gulf are severely limited as to where they can locate their stations. Entities must use platforms already established for drilling operations which, in the deep water of the Gulf, are frequently spaced at intervals of 10 to 20 or more miles. Operation at such distances using spectrum in higher bands where larger bandwidths are routinely authorized (e.g., 6 GHz) is considerably less reliable because of the propagation characteristics, especially in the deep water area of the Gulf."); *Dominion Virginia Power Request for Waiver of Section 90.20 of the Commission's Rules*, 19 FCC Rcd. 12254, ¶8 (PS&CID - 2004) ("Finally, Dominion has demonstrated that there are no reasonable alternatives within the existing rules to accommodate the described needs. As the letter from the State Police indicates, the SIRS, which is a dedicated state-wide public safety system is available only on this frequency. Further, Dominion indicates that alternative communications are not feasible given the need for long-range mobile communications that are reliable and secure, particularly given the sensitive nature of the nuclear facilities it operates."); *Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc.; Petition for Permanent Waiver to Grandfather Special Emergency Radio Service Paging Facilities on 453.025 MHz in the Southern California Metropolitan Area*, 13 FCC Rcd. 5294, ¶¶9-10 (WTB: 1998) ("…Kaiser contends that, of seven alternative SERS frequencies, five are unsuitable for its paging operations. Four of these five frequencies, 35.64, 35.68, 43.64 and 43.68 MHz, are low-band frequencies which do not penetrate buildings well, thus making them practically useless for a wide-area system located in an urbanized area….Given Kaiser's stated associated costs and the resulting deflection of financial resources away from enhancement of current medical paging operations, coupled with the lack of any significant benefit resulting from migration to another channel, we conclude that there are no reasonable alternatives to permitting Kaiser to continue to operate on 453.025 MHz, and that the public interest, therefore, would not be served by requiring its relocation.");; Application of State of Wisconsin, 15 FCC Rcd. 4312, ¶12 (PS&PWD: 2000) ("Additionally, we find that the record in this proceeding indicates that Wisconsin has no reasonable alternatives within the existing Rules to implement the Army/Wisconsin

Dynetics once again thanks the Commission for its close attention to the important issues raised in this proceeding, and reiterates its request for grant of the relief requested on an expedited basis.

Sincerely,

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pilot trunked system. Wisconsin states that interoperability is the primary reason it believes that a next generation public safety communications system in the VHF band is necessary. According to Wisconsin, while it has considered other bands, it believes that anything other than VHF frequencies will drastically reduce the level of interoperability that currently exists in the State. Currently, all statewide mutual aid frequencies, and approximately 90-95 percent of all public safety communications in Wisconsin are VHF. Therefore, taken together, both the Government requirements and Wisconsin's concerns persuade us that there appear to be no reasonable alternatives for the Army/Wisconsin system within the parameters of the proposal as presented. We find that there is justification, pursuant to Section 2.102 of the Commission's Rules, to authorize Wisconsin to use the identified Government frequencies in the 138-144 MHz frequency band and to construct the four-site VHF trunked system.") (footnotes omitted).